

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Joshua L. Gallishaw, #251362,)	C/A NO. 9:11-404-CMC-BM
)	
Plaintiff,)	
)	OPINION and ORDER
v.)	
)	
Officer DeLoach; Officer Williamson;)	
Sgt. Hicks; Sgt. Housier; Lt. Housier;)	
Capt. Best; Warden Cohen; Major NLN;)	
Sgt. Marquez; S.C.D.C. Director; and)	
other unknown John Does and Jane Does;)	
Individual and Official Capacity,)	
)	
Defendants.)	
_____)	

This matter is before the court on Plaintiff's *pro se* complaint, filed in this court pursuant to 42 U.S.C. § 1983.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(d), DSC, this matter was referred to United States Magistrate Judge Bristow Marchant for pre-trial proceedings and a Report and Recommendation ("Report"). On February 16, 2012, the Magistrate Judge issued a Report recommending that Defendant Marquez be dismissed from this action without prejudice, and that the remaining Defendants' motion for summary judgment be granted. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Plaintiff filed objections to the Report and a motion for appointment of counsel on March 5, 2012.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court.

See Mathews v. Weber, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

After conducting a *de novo* review as to objections made, and considering the record, the applicable law, and the Report and Recommendation of the Magistrate Judge, the court agrees with the findings of the Report. Therefore, the court adopts the Report by reference in this Order.

Plaintiff's objections do not specifically address alleged infirmities in the Report. They are without merit and are rejected.

Defendants' motion for summary judgment is **granted**. Plaintiff's claims relating to conditions of confinement at Wateree Correctional Institution are dismissed without prejudice for failure to exhaust administrative remedies. *See Bryant v. Rich*, 530 F.3d 1368, 1375 n.11 (11th Cir. 2008) (noting that district court's dismissal without prejudice on summary judgment motion proper where "neither party has evidenced that administrative remedies at [the correctional facility] are absolutely time barred or otherwise clearly infeasible."). Accordingly, Defendant Sgt. Marquez is dismissed without prejudice.

As to the remaining Defendants, the motion for summary judgment is granted and the remaining claims are dismissed with prejudice.

Plaintiff's motion for appointment of counsel is denied as moot.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
March 9, 2012